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ARIZONA ATTORNEY GENERAL

October 22, 1953
Opinion No. 53-177

TO: The Honorable Henry C. Kelly
Judge of the Superior Court
Yuma County Courthouse
Yuma, Arizona

RE: Arizona Children's Colony

QUESTION: Analysis and interpretation of
Article 9, Chapter 8, Arizona
Code Annotated, 1939, as amended,
concerning admission of children
to the Arizona Children's Colony.

ELIGIBILITY OF CHILD

Section 8-903, A.C.A. 1939, as amended, sets up the requirements of eligibility and admission to the Arizona Children's Colony of a minor child. A child is eligible:

- (1) If his parent or guardian has resided in the State for the requisite statutory time or if the child is a public charge.
- (2) If the child is mentally deficient as contemplated by this section.
- (3) If the child's estate or parent or guardian is able to pay quarterly in advance the tuition set up by the Arizona Children's Colony,

or

If the county in which the child resides will pay quarterly in advance for his maintenance, if the child is an indigent.

From a reading of this section, it becomes clear that before an indigent child is eligible for admission, the county in which the child resides must agree to pay for his maintenance.

The following are the eligibility requirements for a child to be admitted to the Arizona Children's Colony when he is not an indigent:

- (1) His parent or guardian has resided in the State not less than three (3) years prior to the date of petition for the child's admission.
- (2) The child is so mentally deficient that he is incapable of managing himself and his affairs and his welfare requires the services offered by the Colony.
- (3) His estate, parent, relative or guardian is able to and does pay quarterly in advance a sum sufficient to maintain the child at the Colony.

An indigent child needs the following qualifications for admission to the Colony:

- (1) The child's parent or guardian has resided in the State not less than three (3) years prior to the date of petition for admission or the child is a dependent and public charge or ward of the State or political subdivision thereof;
- (2) The child is so mentally deficient that he will benefit by the services of the Colony; and
- (3) The County in which the child resides consents to pay quarterly in advance for his maintenance at the Colony.

PROCEDURE FOR ADMISSION

Section 8-904, A.C.A. 1939, as amended, provides that a parent or guardian of a mentally defective child may file with the Arizona Children's Colony Board a verified petition requesting that said child be admitted to the Colony. The required contents of this petition are as set out by the Statute. Subsection (b) of this Statute reads as follows:

"8-904. Petition for admission.-- * * *
(b) In the event the child is an indigent, application shall be made to the board by the board of supervisors of the county in which it resides."

From Subsection (b) of Section 8-904, supra, it appears that if the child is an indigent, an application to the Arizona Children's Colony for admission of this child to the Colony may only be made

by the Board of Supervisors of the County in which the child resides. No one else has the authority nor the power to make such an application to the Colony Board for the admission of an indigent child.

At this juncture, it will be wise to define the word "indigent". Defined in the case of GOODALL v. BRITE, (1936) 54 P. 2d 510, 11 Cal. App. 2d 540, the word "indigent", as used in connection with the admission of an indigent insane to hospitals, was held to include persons with insufficient means to pay for hospitalization after providing for those who legally claim his support. Another case held that to be an indigent does not mean that a person must be a pauper, and, within the meaning of the Statute relative to the commitment of the insane to the Government Hospital for the insane, an insane person with insufficient estate to pay for his maintenance in the hospital after providing for those who could claim his support is an indigent. DEPUE v. DISTRICT OF COLUMBIA, 45 App. D. C. 54. A person is an indigent, who is destitute of property or means of comfortable substance; one who is needy or poor. JUNEAU COUNTY v. WOOD COUNTY, 85 N. W. 387, 109 Wisc. 330. The term "indigent" is commonly used to refer to one's financial ability and ordinarily indicates one who is destitute of means of comfortable substance so as to be in want. WEEKS v. MANSFIELD, 80 A. 784, 84 Conn. 544. From the above authority, it is apparent that a child is an indigent under the purview of Chapter 8, Article 9, A.C.A., as amended, if the child does not have sufficient funds for his total support. In other words, even though the child might have sufficient funds to pay for ninety percent of his tuition at the Arizona Children's Colony, he will still be considered an indigent.

Section 8-905, A.C.A. 1939, as amended, in Section (a) says that upon receipt of an application for admission of an indigent child, the Colony Board shall (must) file a petition for admission with the Superior Court of the proper county. This application for admission (not the petition, to be filed with the court) can only come from the Board of Supervisors of the County wherein the child resides. The Superior Court, upon receiving a petition for the Colony Board, shall (must) hold a hearing on this petition and, in the event the Court finds in his hearing that the child is eligible in all respects to enter the Colony, the Court may order admission of the child to the Colony. It should be pointed out that it is within the Court's discretion to order admission of an indigent child.

The following procedure must be followed in the admission to the Colony of a child who is not an indigent:

- (1) The parent or guardian of the mentally defective child files with the Colony Board a verified petition requesting that the child be admitted to the Colony. This

petition must include:

- (a) Relationship of the child to the petitioner;
 - (b) Name, age, sex and residence of the child;
 - (c) Statement of mental and physical condition of the child;
 - (d) Whether the child has property or means of support;
 - (e) Name of person having custody of the child; and
 - (f) Place and length of time where the child has resided in the State.
- (2) This petition is considered by the Colony Board and the child is admitted if the Colony Board finds that the child has the qualifications set forth in Section 8-903, supra.

From this it will be seen that there need be no Court order or concurrence by a Board of Supervisors in the admission of a non-indigent child to the Children's Colony. If the Colony Board finds that the child has the necessary qualifications and in its discretion deems the child to be qualified in every way to be admitted to the Arizona Children's Colony, the Colony Board may approve the admission of the child.

The following procedure must be followed in the admission of an indigent child to the Arizona Children's Colony:

- (1) The Board of Supervisors of the County in which the child resides makes application to the Colony Board for admission of the child to the Colony.
- (2) The Colony Board shall file a petition for admission with the Superior Court of the County in which the child resides.
- (3) The Superior Court shall conduct a hearing, after having the child examined by two reputable physicians, to determine the mental status of the child and whether the child is a carrier of a contagious disease. The Court shall also appoint the Sheriff of the County to determine the residence of the child and the amount of the estate of the child. At the hearing, if the Court finds:
 - (a) The child resides within the jurisdiction of the Court;
 - (b) The child is not afflicted with a contagious disease;
 - (c) That the Board of Supervisors of the county wherein

- the child resides has agreed to pay for the support of the child while in the Colony;
- (d) That the child is mentally defective and his welfare requires the services provided in the Colony; and
 - (e) That the allegations contained in the petition by the Colony Board to the Court are true,

then the Court may (at its discretion) order admission of the child to the Colony.

COURT ORDER OF ADMISSION

Section 8-906, A.C.A. 1939, as amended, concerns the order of admission, which the Court may make in the case of an indigent child. This section states that the order shall include the amount of the indigent child's estate and the weekly amount the person liable for his support CAN pay for the maintenance of such child in the Colony.

In analyzing this section, we find that nowhere is there authority given to the Court to fix liability upon the person liable for the child's support to pay for a certain part of the cost of maintenance of such child in the Colony. The above-mentioned Section states only that the order shall include the amount which the person liable for the child's support can pay (this does not mean must) or is capable of paying for the maintenance of the child. This rule is supported by the fact that there is no provision in this article for notifying the parents of indigent children of the court hearing to determine their ability to pay for part of the costs of the maintenance of their child at the colony. This, in effect, would be fixing a liability on the parents without giving them a day in court.

If the parent or person liable for the child's support refuses or fails to pay the percentage as set forth in the order of admission, no legal action can be taken against this person solely on the basis of the order of admission. In event the person liable for the child's support does not pay any amount toward the support of the child, the County must pay the entire amount (that is, if the child were admitted under the procedure provided for the admission of an indigent child). As stated above, a child is considered to be indigent if his estate or the person responsible for his support does not pay or is incapable of paying the full tuition at the Arizona Children's Colony.

If the child is admitted as a non-indigent and no Court order is made for the admission of the child and the persons responsible for the support of the child do not pay quarterly in advance a sum sufficient to maintain the child at the Colony, the child must be dismissed from the Colony or be admitted as an indigent under the procedure set out above.

If a child is being considered for admission as an indigent and the parents promise to pay fifty percent (50%) of the cost of the maintenance of the child at the Children's Colony, the Board of Supervisors may follow the following procedure to more readily assure the fulfillment of the parents' moral obligation: The Board may make a contract with the parents or the person responsible for the support of the child to the effect that if the Board petitions for admission of the child to the Colony Board and the child is subsequently admitted, the parents will pay the agreed upon percentage of the child's maintenance while the child resides at the Children's Colony. Then, if the parents or the person responsible for the support of the child fails to pay the agreed upon percentage of the cost of the maintenance of the child, the Board of Supervisors may bring a contractual action against the parents or the person responsible for the support of the child for this amount.

This is a rather clumsy means of handling the situation, but in view of the wording used in Section 8-906, supra, there is no basis for the Board of Supervisors suing on the court order of admission. Such a procedure as was set forth in Section 8-310, A.C.A. 1939, as amended, could be legislated for the Arizona Children's Colony. This would enable the Board of Supervisors or the Arizona Children's Colony, as the Statute might provide, to sue the estate of the child for the amount fixed by the Court order which is to be paid by the child's estate for his support.

Section 8-906, supra, might also be changed to provide that the Court in its order of admission shall include the amount which the child's parents or the person liable for the child's support shall pay for the maintenance of such a child in the Colony. By doing this, the Court order would then fix liability on the person responsible for the support of the child and, thus, the Board of Supervisors or the Children's Colony, depending upon which would be designated by the law, could then sue the person responsible for the support of the child to collect the amount set by Court order that such person must pay for the child's support while the child remained in the Colony. An additional enforcement method might be that the non-paying parent could be held in contempt of court. A provision should also be placed in the statute giving the parents or person responsible for the support of the child a day in court before any liability would be fixed upon them by a court order.

TRANSFER FROM OTHER INSTITUTIONS

Section 8-907, A.C.A. 1939, as amended, concerns the transfer of children from other state institutions. This section is divided into four paragraphs. Paragraph (a) reads to the effect that the superintendent of a state institution, other than the State Hospital and the Colony, may report to the examining physicians and request an examination of any child in his institution whom the superintendent deems mentally defective. When the examining physicians receive this report and request from a superintendent, they must conduct the examination of the child and, in event they find the child to be mentally defective and capable of benefiting by the services offered by the Colony, the examining physician must file a petition showing such facts with the Court which originally ordered the admission of the child to the institution in which the child is at that time residing. The Court which originally ordered the admission of the child to the state institution in question, upon receipt of this petition from the examining physicians and if the Court finds that the child is mentally deficient and will benefit by the services offered by the Colony, must order the child transferred to the Colony. From this we see that when a child is in a state institution, he may be transferred to the Colony without any action on the part of the Board of Supervisors of the County wherein the child resides.

If the child is an indigent, under Section 8-907, subsection (d), A.C.A. 1939, as amended, the Board of Supervisors of the County wherein the indigent child resided at the time the child was committed originally to the state institution from which it is being transferred to the Colony, must bear the cost of maintaining, training and educating the indigent child. There is no prerequisite of independent action by the Board of Supervisors of a County which must bear the expenses of maintaining the child in the Children's Colony before the child can be transferred from another state institution to the Colony.

Subsections (b) and (c) of Section 8-907, supra, refer to the situation wherein a child is transferred from the State Hospital to the Children's Colony. When the superintendent in the State Hospital determines that a child in the State Hospital is not psychotic but is mentally deficient and would benefit by the services offered by the Colony, the superintendent must notify the Board of Directors of the Children's Colony and the Court, which committed the child to the State Hospital, of his determination and such child is then transferred to the Colony as soon as quarters in the Colony are available to the child. It will be seen that in this situation no Court order is needed nor is any action needed by the Board of Supervisors which would bear the cost of maintenance if the child were indigent.

Subsection (c) of this section refers to the method of supporting the child prior to its admission to the Colony, but subsequent to the determination by the superintendent of the State Hospital that the

child should be transferred to the Colony. This section says that the guardian of the estate of the child, as provided by Section 8-310, A.C.A. 1939, as amended, shall continue to pay for the support of the child pursuant to the Court order of commitment to the State Hospital. If at the time a child was committed to the State Hospital it was an indigent, the County from which said child was committed to said Hospital shall pay the cost for treatment and maintenance of the child after the superintendent of the State Hospital notifies the Colony of the transfer while the child remains at the State Hospital prior to transferal to the Colony.

Subsection (d) of Section 8-907, supra, provides for the method whereby the child will be supported after its transferal from any state institution. This section says that the child's parent or guardian shall pay the cost of maintaining, training and educating said child, but if the child is an indigent the County in which said child resided when committed to the State Hospital shall pay the cost of maintaining, training and educating such child.

The conclusions which can be drawn from an analysis of Section 8-907, supra, are as follows:

- (1) When a child is transferred from any state institution to the Children's Colony under the method provided for in Section 8-907, supra, if the child is an indigent, the county wherein the child resided at the time it was committed to the state institution must bear the cost of maintaining the child after the child is transferred to the Colony, even though the Board of Supervisors of the county which must support the child had never given its approval to such transfer.
- (2) It will be noticed that there is a certain inconsistency in Section 8-907, subsection (d). This section says that after the admission to the Colony of a child transferred from any state institution, if the child is an indigent, the county in which the child resided when committed to the State Hospital shall pay the costs of the child at the Colony. This section does not mention what county shall pay the charge if the child is transferred from any state institution other than the State Hospital. It would seem the logical intent of the Legislature that the county in which said child resided when committed to the state institution from which it had been transferred to the Colony must bear the cost of maintaining the child at the Colony.
- (3) In Section 8-907, supra, there is no provision made for the support of the child who has been ordered by a court to be transferred to the Children's Colony from a state

institution other than the State Hospital during the time between the court order and the physical transfer of the child. In view of this it must be presumed that the child shall be supported in the same manner as it was prior to the court order directing the child's transfer.

- (4) It is the considered opinion of this Department that, if a child is transferred from any state institution to the Arizona Children's Colony, the county in which the said child resided at the time of the child's original commitment to the state institution is responsible for the cost of maintaining the child at the Colony. This is true even though the parent or the child's estate, or the child's guardian, had been paying the cost of maintaining the child at another state institution prior to the transfer of the child to the Colony. In other words, irrespective of whether the child is an indigent or not, if the child is transferred under this Section to the Children's Colony and for any reason the child's estate or the child's parent or guardian fails to pay for the cost of maintaining the child at the Children's Colony, the county in which the child resided at the time of the child's original commitment to a state institution must bear this cost of maintaining the child at the Colony.

The only other Statute, which need be considered in fully analyzing the problem before us, is Section 8-911, A.C.A. 1939, as amended, concerning liability for costs of maintaining a child at the Colony. Section (a) of the above-mentioned Statute says that if it appears to the Colony Board that a child or its parent or guardian can pay for its maintenance, training and education in the Colony, the Board must require such payment quarterly in advance to cover the cost of the child. However, if a child is an indigent, it shall be a charge against the county in which the child resides at the time of his admission to the Colony. So, we see that if the child is not transferred from another state institution to the Colony, but is admitted directly to the Colony, then the Board of Supervisors of the County wherein the child resides at the time of his admission to the Colony must pay for the costs of maintaining the child, if the child is an indigent.

The Honorable Henry C. Kelly
Judge of the Superior Court

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WRIT OF CERTIORARI

We now turn to the effect of a court order made under Sections 8-905 through 8-906, supra. It will be seen that the court order rendered under these sections is binding on the Board of Supervisors. However, if the Board of Supervisors has not approved the admission of an indigent child to the Children's Colony, under Section 8-903, supra, the child is not eligible for admission. This would deprive the court of its jurisdiction to admit such an indigent child and the Board of Supervisors of the county, which would be charged with the support of this indigent child, may bring a writ of certiorari to question the jurisdiction of the Court in ordering the admission of such a child to the Children's Colony. (See Section 28-101, A.C.A. 1939) If a writ of certiorari is not brought within the proper time by the Board of Supervisors the court order becomes binding and has the effect of a judgment and the county must bear the costs of supporting the indigent child during his stay at the Colony, even though it had never approved the admission of the child. The time within which the Board of Supervisors may bring the writ of certiorari is set forth in 14 C.J.S., Sections 64, 65 and 66, pages 208 through 213.

The basic rule is that, in the absence of a statute limiting the time wherein a writ of certiorari can be brought, the limitation is often governed by an analogy to the time limit on writs of error and appeals. In Arizona an appeal must be brought within sixty (60) days after the judgment or order from which the appeal is being taken. However, this rule concerning writs of certiorari is only a rule of thumb and is merely a guide to the general limitation of discretion and is not an inflexible rule, but if a party expects to bring himself out of this limitation he must show circumstances to the Supreme Court which justify delay in applying for the writ of certiorari.

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